

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

NOV - 9 2015

The Honorable Joe M. Crosby, Master-In-Equity **S.C. Supreme Court**

Case No. 2011-CP-22-00180
Appellate Case No. 2015-001125

Kennedy Funding, Inc. as predecessor-in-interest, and BNP Paribas Respondents,

v.

Pawleys Island North, LLC, Will Darwin Wheeler, Peggy Wheeler-Cribb, and
J. Mars Sapp, Defendants,
of whom Pawleys Island North, LLC, Will Darwin Wheeler and Peggy Wheeler-
Cribb are Respondents and

J. Mars Sapp is the Petitioner.

**RETURN OF J. MARS SAPP
TO RESPONDENTS' PETITION FOR REHEARING**

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INTRODUCTION

Respondents' Petition for Rehearing is based on two assertions: (1) that the question, whether the mortgage itself was fraudulent, was indeed raised to the Court of Appeals; and (2) that the argument regarding the effect of the prior fraudulent transfer, which this Court has remanded to the Court of Appeals for a ruling, has already been answered by the Court of Appeals.

Petitioner Sapp concedes that the question whether the mortgage was fraudulent as between Pawleys and Kennedy Funding was raised to the Court of Appeals, but this issue has no procedural effect on this Court's order for remand because, as set forth below, Petitioner wholly agrees with this Court's conclusion that the remanded argument was never ruled upon.

ARGUMENT

Petitioner's argument, that the prior fraudulent conveyance rendered the mortgage void as to Petitioner, was pled and preserved as a separate, alternative issue to that of whether the mortgage itself was fraudulent. It is this argument which the Court of Appeals has not addressed and which this Court remanded for a ruling. Under the same facts as presented here, Coleman v. Daniel, 261 S.C. 198, 199 S.E.2d 74 (1973) and other cases cited by Petitioner consistently hold in favor of the defrauded creditor, but the Court of Appeals never ruled on this argument, or if it did, the Court of Appeals misapplied the precedent of Coleman.

Instead, the Court of Appeals, alluding only briefly to the Coleman line of cases, stated, "Each of these cases involve transactions between close friends or family. Whereas here, the transfer was between an LLC and a corporation." (Opinion, Section II, p. 6) The court did not, however, ascribe any legal significance to this distinction, for it has none. Instead, the court, with no analysis or further mention of the argument regarding the prior fraudulent transfer,

concluded Section II as follows: “Thus we find the transfer from Pawleys to Kennedy was not a fraudulent transaction.” (Opinion p.7; emphasis added).

Likewise, at the close of the opinion, the court summarized its ruling as follows:

“Thus, because we find Kennedy’s mortgage was not a fraudulent conveyance, we find Kennedy’s lien had priority over Sapp’s lien on the property.” (Opinion, p.8)

These holdings are irrelevant to the priority of a defrauded judgment creditor, and this Court properly remanded for the Court of Appeals to determine if the mortgage was rendered void by the “the fraudulent conveyance between Will Darwin Wheeler and Pawley’s Island North, LLC.”

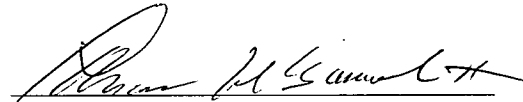
The remanded argument, that the fraudulent conveyance between Wheeler and Pawleys rendered the mortgage void as to Sapp, was mistakenly conflated by the Court of Appeals with the argument that the mortgage was itself fraudulent. If the mortgage itself were fraudulent, that would have been an additional ground upon which Sapp’s judgment lien would have priority. However, even if the mortgage is deemed valid as between Pawleys and Kennedy Funding, this Court’s remand was proper since the Court of Appeals never properly addressed the effect of the fraudulent transfer on the defrauded judgment creditor, Sapp. The remanded argument, which does not require proof of a fraudulent mortgage, has never been ruled on by the Court of Appeals.

CONCLUSION

Petitioner respectfully submits that the order remanding the above referenced argument to the Court of Appeals for a ruling should stand, or, in the alternative, that this Court should grant certiorari for final review of that argument.

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Respectfully submitted,

A handwritten signature in black ink, appearing to read "Paul H. Hofer", written over a horizontal line.

Paul H. Hofer

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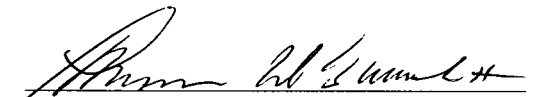
J. Mars Sapp is the Petitioner.

PROOF OF SERVICE

I certify that I have served a copy of the Return of J. Mars Sapp to Respondents' Petition for Rehearing on opposing counsel by depositing a copy of it in the United States Mail, postage prepaid, on November 9, 2015 addressed as follows:

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